

Plaintiffs' Demonstrative

Redacted Version of Document Sought to be Sealed

Brown, et al. v. Google

Plaintiffs' Presentation

November 4, 2021

What Plaintiffs Are Entitled to Do

1. Identify Class Members Using Google Data
2. Identify Number of Unlawful Interceptions of Private Browsing Data
3. Identify Ways/Amounts Google Profited from Private Browsing Data

GOOG-BRWN-00184875
Plaintiffs' Objections Ex. B

GOOG-CABR-00501220

Incognito Browsing.

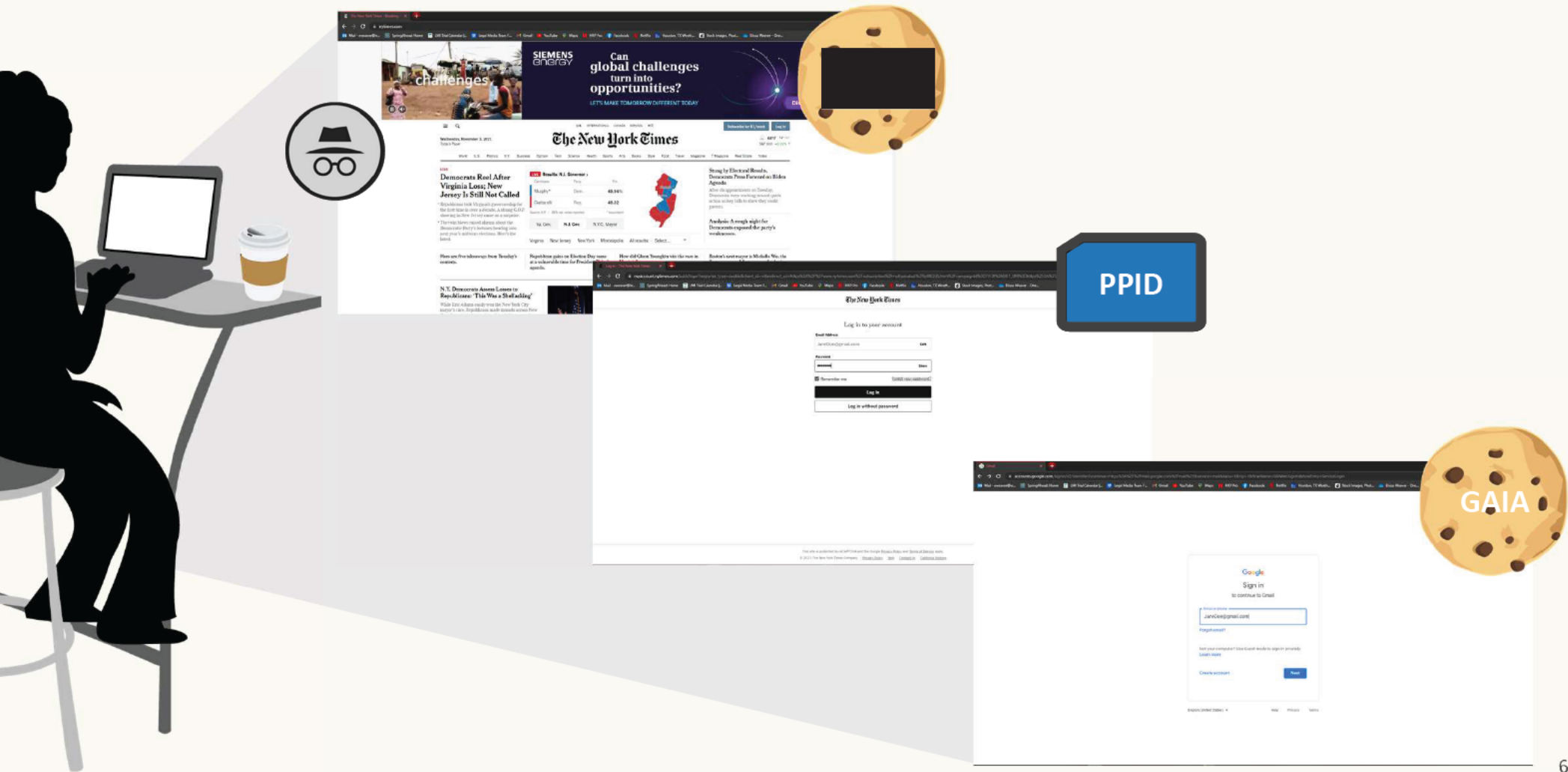
PPID



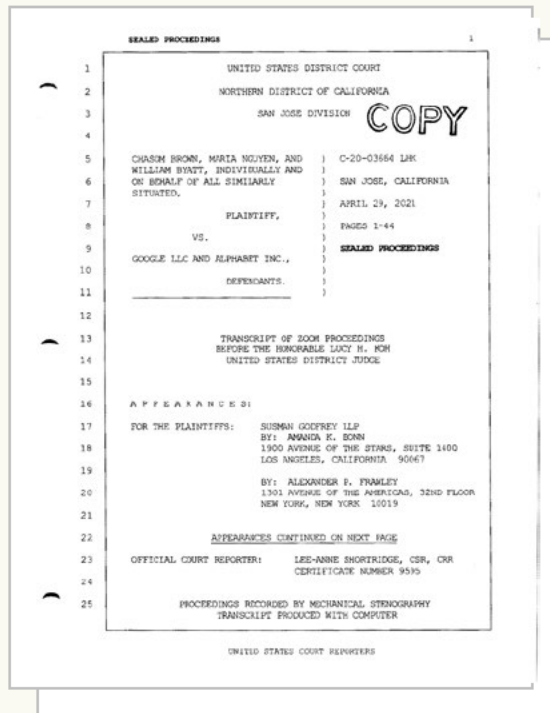
 This block contains a collage of browser windows and cookies.

- At the top left, a Google search page for 'NYTimes' is shown.
- Below it is a screenshot of the New York Times homepage with various news articles.
- To the right of the NYTimes page is a large, round, golden-brown cookie with chocolate chips. A black rectangular box is placed over the cookie.
- Below the NYTimes page is another screenshot of the New York Times homepage, showing a different set of articles.
- To the right of this second NYTimes page is another large, round, golden-brown cookie with chocolate chips, also with a black rectangular box over it.
- At the bottom right, there is a blue rectangular box with the text 'PPID' in white.
- At the very bottom right, there is a small, dark blue rectangular box with the text 'PPID' in white.

Incognito Browsing: PPID, GAIA



Plaintiffs Are Entitled to Identify Class Members Using Google's Data



THE COURT: WELL, BUT WHAT THE PLAINTIFFS ARE ASKING FOR IS PIECES OF INFORMATION FROM DIFFERENT PLACES BECAUSE THEY WANT TO SEE IF THEY CAN **PIECE TOGETHER**, BY COMBINATION OF THAT INFORMATION, CLASS MEMBERS. AND THAT'S WHY -- I MEAN, IT SEEMS TO ME THAT **THEY HAVE A RIGHT TO TRY TO DO THAT WITH WHATEVER INFORMATION YOU HAVE.**

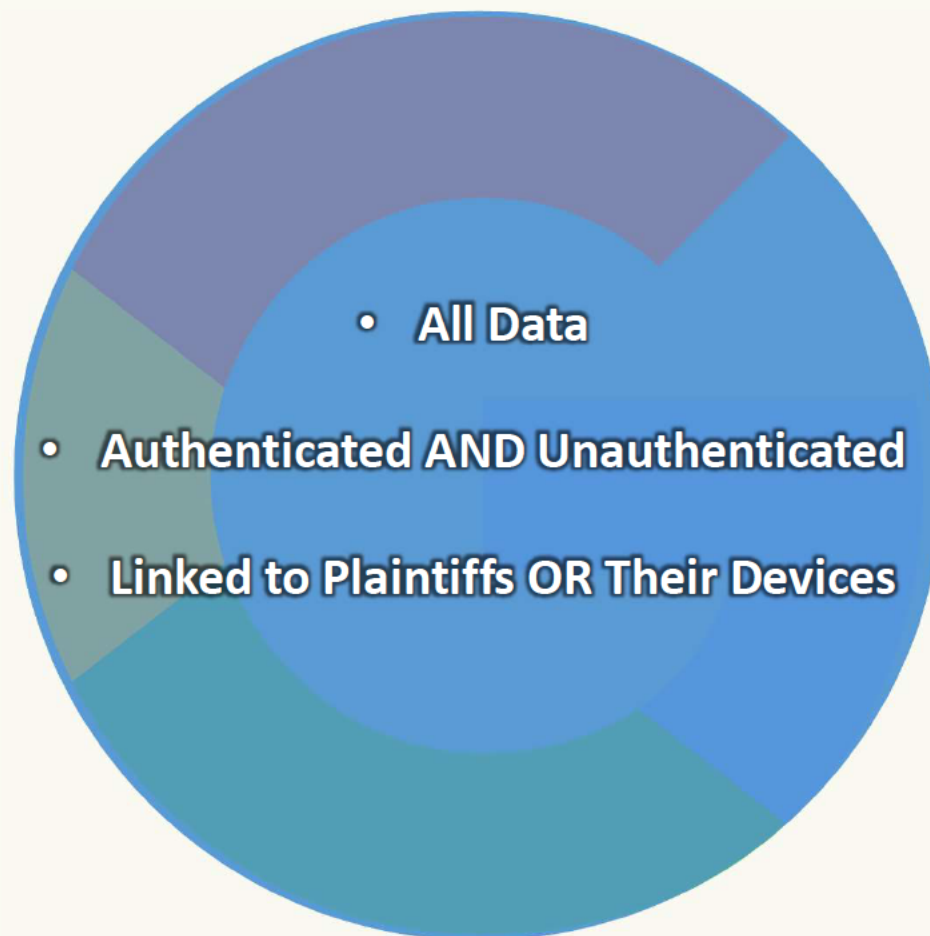
April 29 Transcript, 19:2-7

April 30 Order: Authenticated & Unauthenticated Data Linked to Plaintiffs or Their Devices

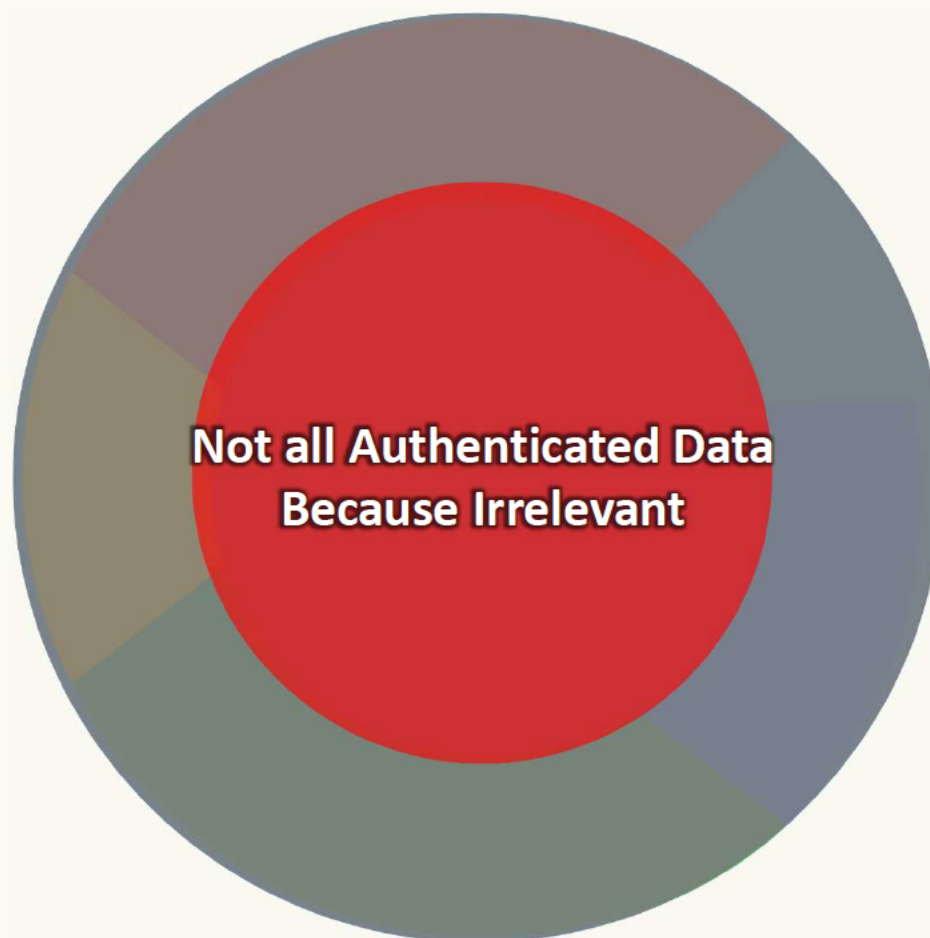
<p>P6 4/7/21</p>	<p>Class member identification: The parties have a dispute regarding Plaintiffs' RFP No. 10: "Documents sufficient to identify all alleged class members, including all electronic or physical address information associated with alleged class members."</p>	<p>For RFP Nos. 10 (class identification) and 18 (individuals' data), as an initial step, Google will produce identification data for the named Plaintiffs. Google will promptly supplement any production made to date with authenticated data identifiers as to both the individuals and their devices provided Plaintiffs have provided the necessary device information, as well as unauthenticated data. Following Plaintiffs' review of the supplemental production, the Court may entertain a request for a focused 30(b)6 deposition on identification data. Google's supplemental production is due by 5/12/21; parties to meet and confer and submit any further dispute to the Court by 5/20/21; to be heard on 5/26/21 at 1:30 p.m.</p>
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April 30 Order

April 30 Order: Authenticated & Unauthenticated Data Linked to Plaintiffs or Their Devices



Google Does Not Produce All Authenticated Data



GOOG-BRWN-00184875
Plaintiffs' Objections Ex. B

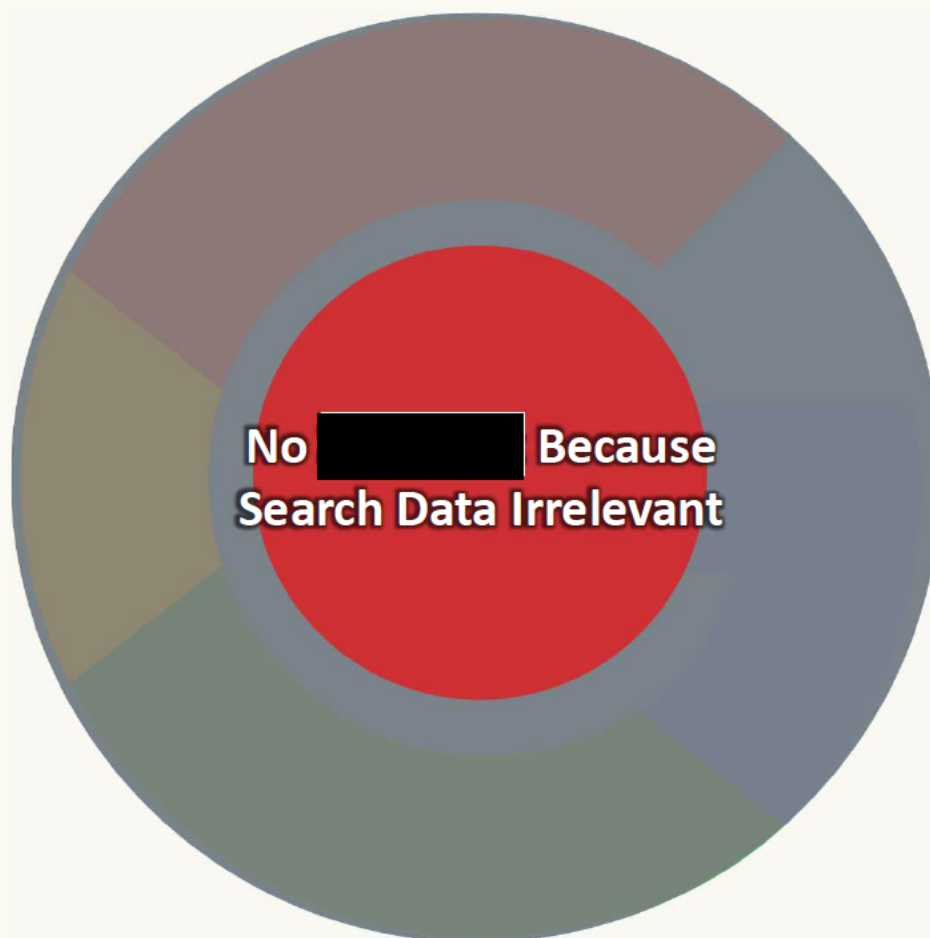
September 14: Google Admits It Failed to Produce Plaintiffs' Data

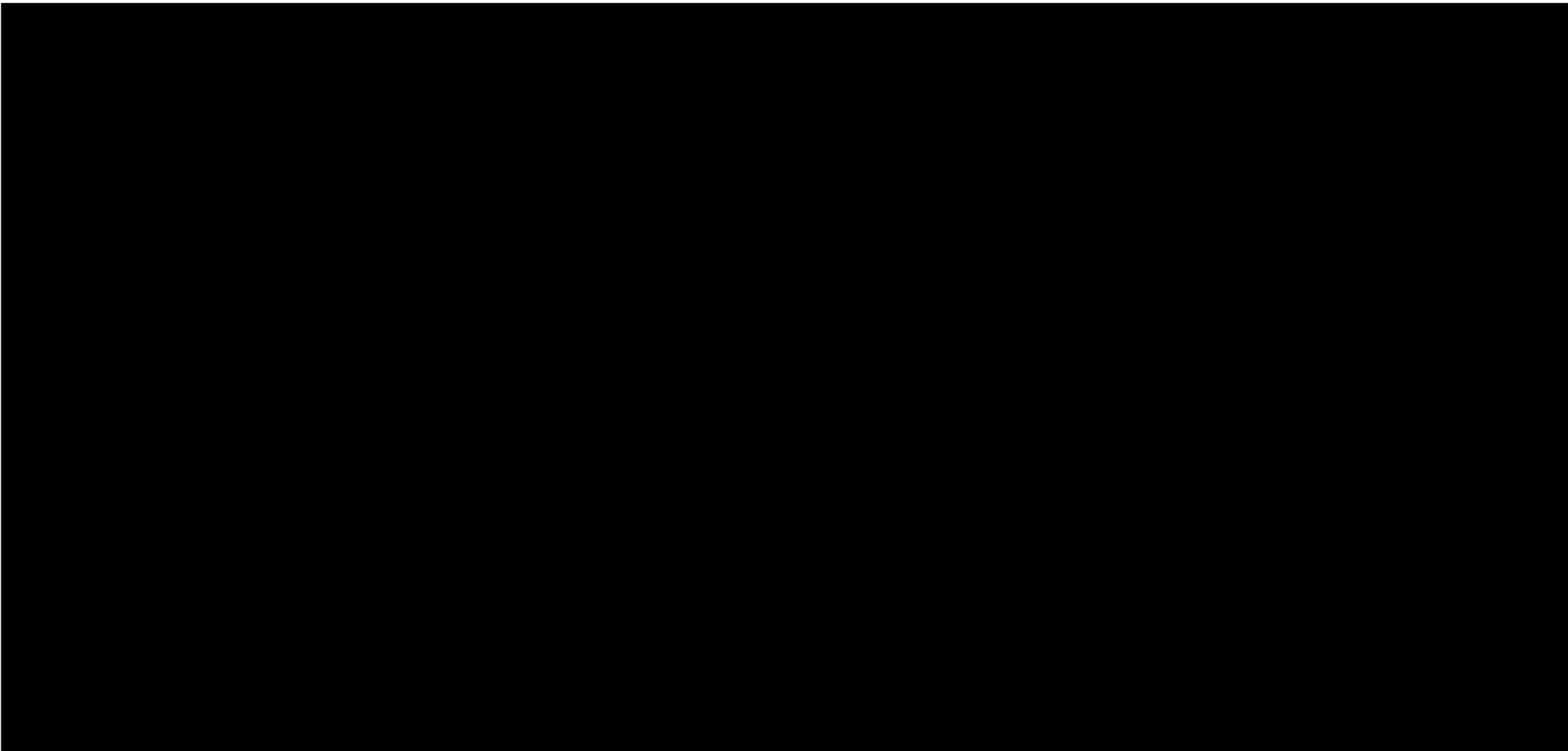
Google has not produced data keyed to the following information Plaintiffs provided:

- **User-agent.** Google does not use user-agents as identifiers and user-agents are not sufficiently unique to identify individual users;
- **X-Client-Data header.** Google does not use X-Client-Data header as an identifier and the header is not sufficiently unique to identify any individual user;
- **IP Address.** Google does not use IP address as an identifier and IP addresses are not a reliable means to identify individual users;
- **IMEI and other hardware identifiers** (Google does not use IMEI and similar hardware identifiers related to the data at issue); and
- **NID cookies** (██████████). This is a cookie Google does not use for display ads but rather uses to optimize Google.com search results, which is out of scope.

Rule 37(b) Motion Ex. H

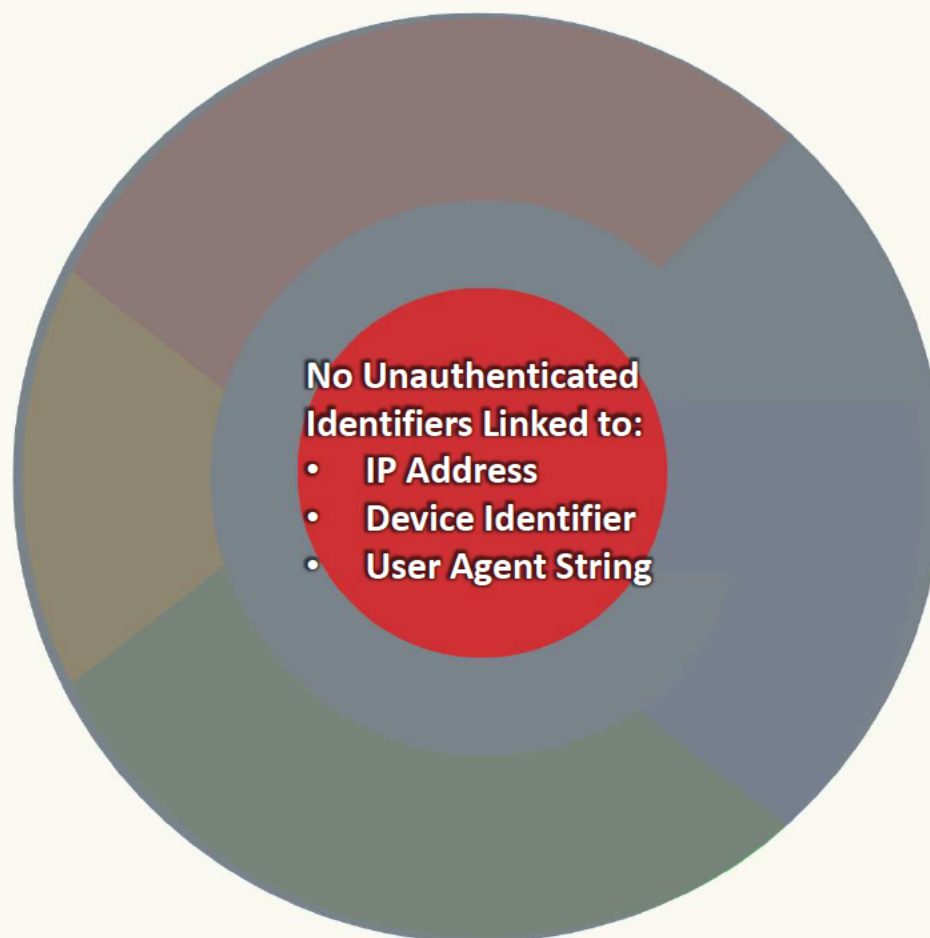
Google Refused to Produce [REDACTED] Identifiers As Irrelevant





GOOG-CABR-00501220

Google Refused to Produce Unauthenticated Data Linked to Plaintiffs' Devices



GOOG-CABR-03611484 at 2

May 12: Google Says It Will Only Produce Unauthenticated Data if Plaintiffs Provide the Unauthenticated Identifiers

Case 5:20-cv-03664-LHK Document 292-8 Filed 10/14/21 Page 2 of 3

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May 12, 2021

Via E-Mail
ROMAG@BSFLI.COM

Further, as we explained in the May 6 Joint Discovery Submission (Dkt. 155), if Plaintiffs provide Google with their unauthenticated identifiers, Google will provide data associated with those identifiers as well, to the extent any exists. We recommend Plaintiffs obtain unauthenticated

produced by the Court on May 7, 2021, Dkt. 159-1 at 1. The timetable provided in Dkt. 147 specifies that Google's supplemental production is due by 5/13/21, parties to meet and confer and submit any further dispute to the Court by 5/20/21, to be heard on 5/26/21 at 1:30 p.m. On May 7, the Court issued a notice continuing the May 26 hearing to June 2. Google will supplement its production of Plaintiffs' data in accordance with the Court's orders. We will also make ourselves available for meet and confer if Plaintiffs see any issue with the supplemental production.

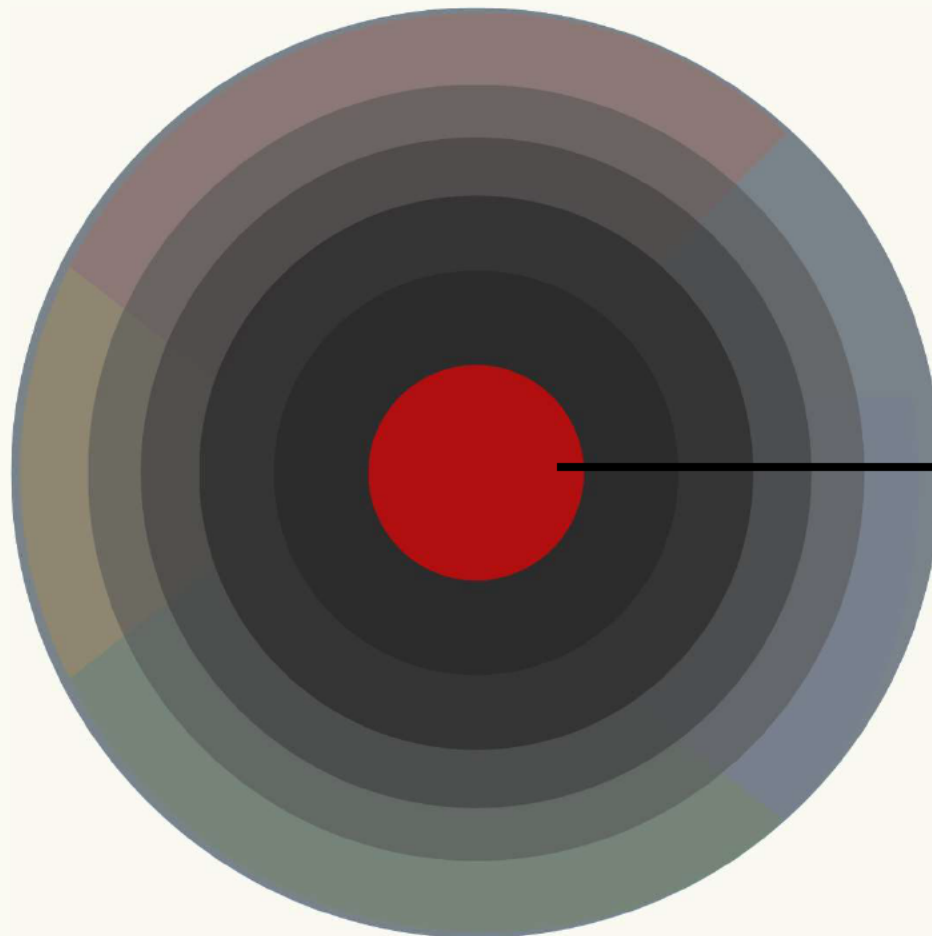
Further, as we explained in the May 6 Joint Discovery Submission (Dkt. 155), if Plaintiffs provide Google with their unauthenticated identifiers, Google will provide data associated with those identifiers as well, to the extent any exists. We recommend Plaintiffs obtain unauthenticated identifiers by opening up a new private browsing session on the devices that they have preserved.

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Rule 37(b) Motion Ex. G

Plaintiffs Left With Only [REDACTED] Cookie Values from
New Private Browsing Sessions that Google Directed Plaintiffs to Create



**Data Associated
with cookie values
from new private
browsing sessions
that Plaintiffs
provided to Google
in May**

Google Sent Plaintiffs on a Useless, Wild Goose Chase

Rule 37(b) Motion Ex. J

June 30: Google Tells the Court It Produced Authenticated Data & Relevant Unauthenticated Data

Case 5:20-cv-03664-LHR Document 211 Filed 06/30/21 Page 1 of 12

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA

CHASOM BROWN, WILLI
JEREMY DAVIS, CL
CASTILLO, and MONIQUE VIKUJILLO
individually and on behalf of all similarly
situated.

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

GOOGLE'S MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
MOTION TO COMPEL REGARDING
DISPUTE P1

Referral: Hon. Susan van Reulen, USMJ

Case No. 5:20-cv-03664-LHR-SVK
GOOGLE'S OPPOSITION TO MOTION TO COMPEL REGARDING DISPUTE P1

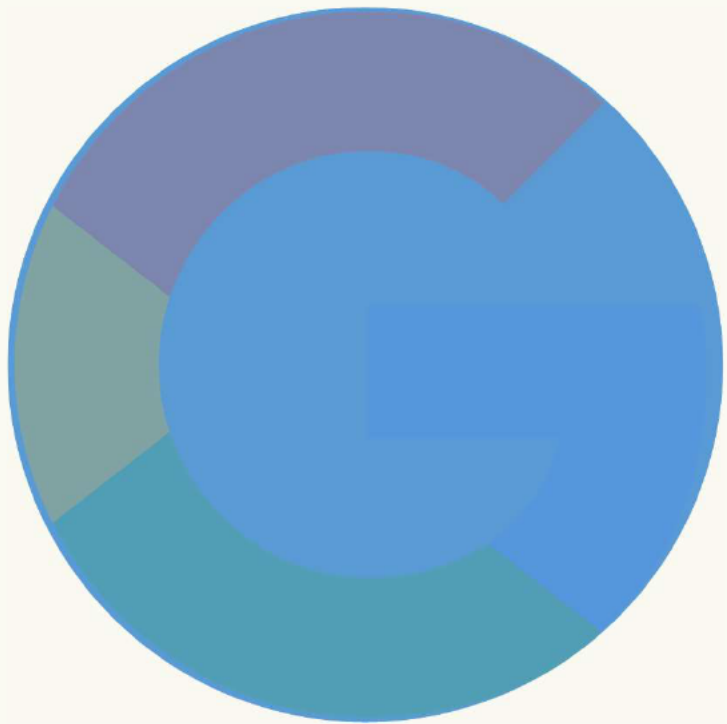
25

26

The motion to compel should be denied. *First*, Google has already produced authenticated data and relevant unauthenticated data; this Court should not order Google to produce additional data from

Dkt. 211 at 1

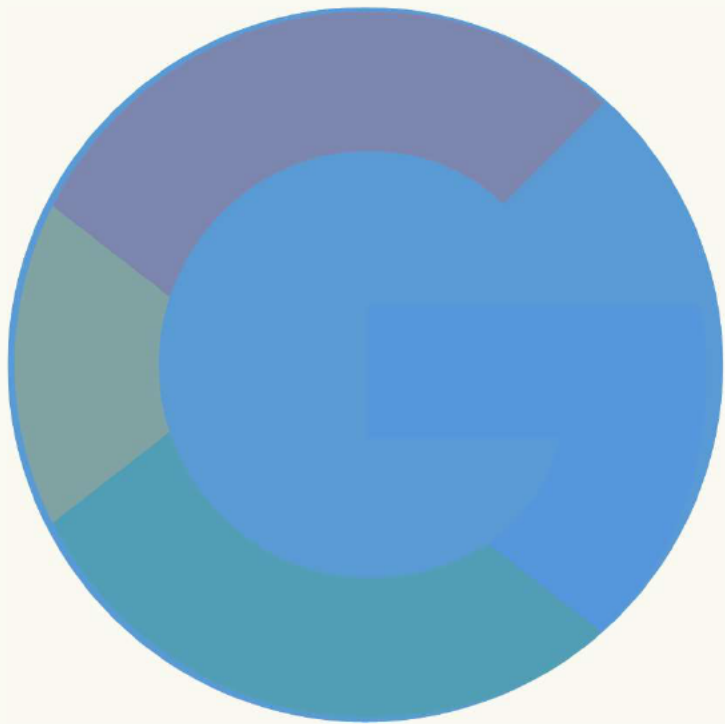
September 16 Order: Google Must Identify *All* Data Sources



- **Step 1:** By the morning of September 17, 2021, Google will identify to the Special Master and Plaintiffs **all databases and data logs** (collectively, “data sources”) that may contain responsive information. For each data source, Google will provide, at

September 16 Order

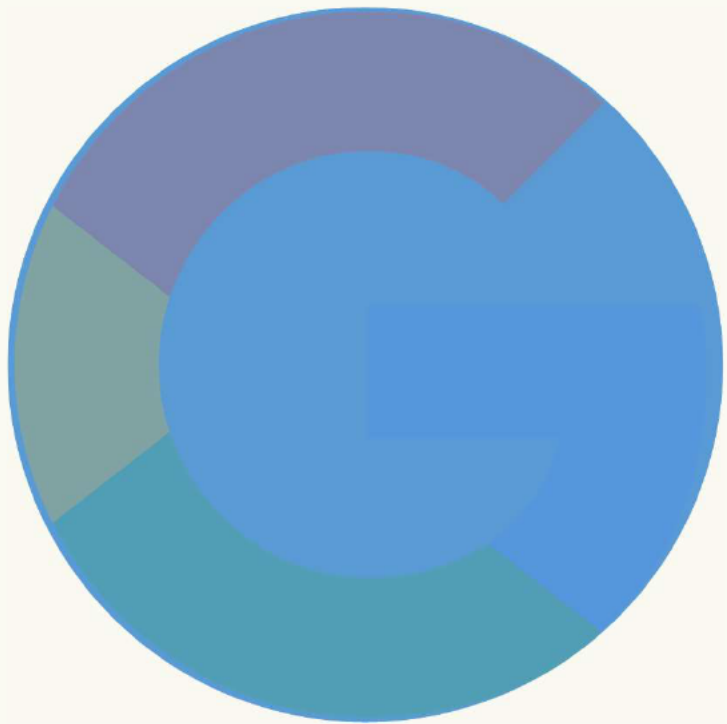
September 16 Order : Google Must Produce Schema, Descriptions, Tools, Manuals



- **Step 2:** The Special Master will supervise a meet and confer with the Parties to identify those data sources that potentially contain responsive information that will be subject to searches and production of responsive records and set a deadline for Google to provide information about each selected data source. For each selected data source, Google will provide, at a minimum: (1) the data schema; (2) definitions and descriptions of each field; (3) tool(s) which Google employees (“Googlers”) use to search each data source; and (4) instruction sets and manuals for all tools identified as being used by Googlers to search any data source identified in this step. The Court is informed that the Special Master has directed

September 16 Order

September 16 Order : Google Must Run Search Strings for *Each* Data Source



- **Step 3:** The Special Master will supervise a meet and confer with the Parties to create search strings for each data source and agree upon a production format. The Special Master will officiate and resolve disputes.

September 16 Order


Google Fails to Comply: Refuses to Identify Authenticated Data Sources

Google does not identify “those potential sources of ESI that contain only authenticated data.”

- Because Plaintiffs’ allegations are limited to specific unauthenticated data (data Google receives when a user is in a private browsing mode and logged out of their Google Account), Google has not identified those potential sources of ESI that contain only authenticated data (data Google receives when a user is logged in to their Google Account).


Rule 37(b) Motion Exhibit I

Google Fails to Comply: Refuses to Identify Search Data Sources



**Google does not
identify sources
that contain Search
data.**

Google Fails to Comply: Identifies a Subset of Data Sources & Does Not Produce All Schema Etc.



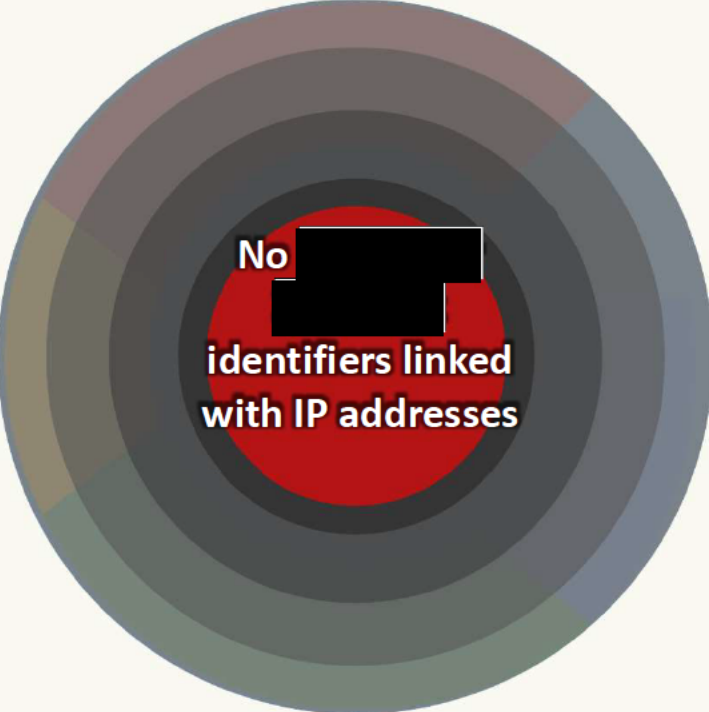
Google only
identifies [redacted]
sources.

Google Fails to Comply: Only Agrees to Search 5 Sources



**Google only
agrees to
search 5 of
these
sources**

Google Fails to Comply: Won't Search [REDACTED] Linked to Plaintiffs' IP Address



No [REDACTED]
identifiers linked
with IP addresses

e. [REDACTED] or their
variants, associated with
above IP addresses;

Google does not agree to search for or produce [REDACTED] identifiers associated with the above derived IP addresses because such a production would include information associated with users who are not Plaintiffs and who have not consented.

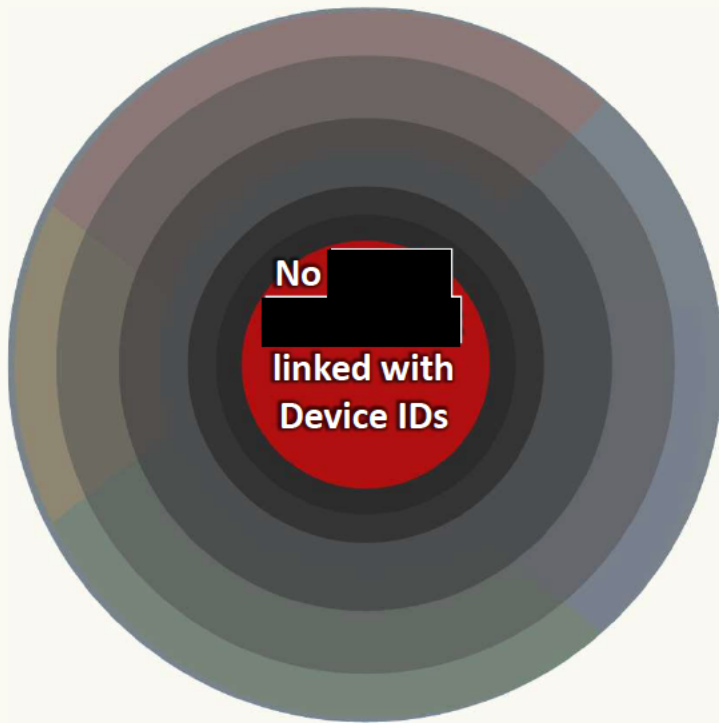
Rule 37(b) Motion Exhibit L

GOOG-CABR-00228767

GOOG-BRWN-00433503
Plaintiffs' Objections Ex. B

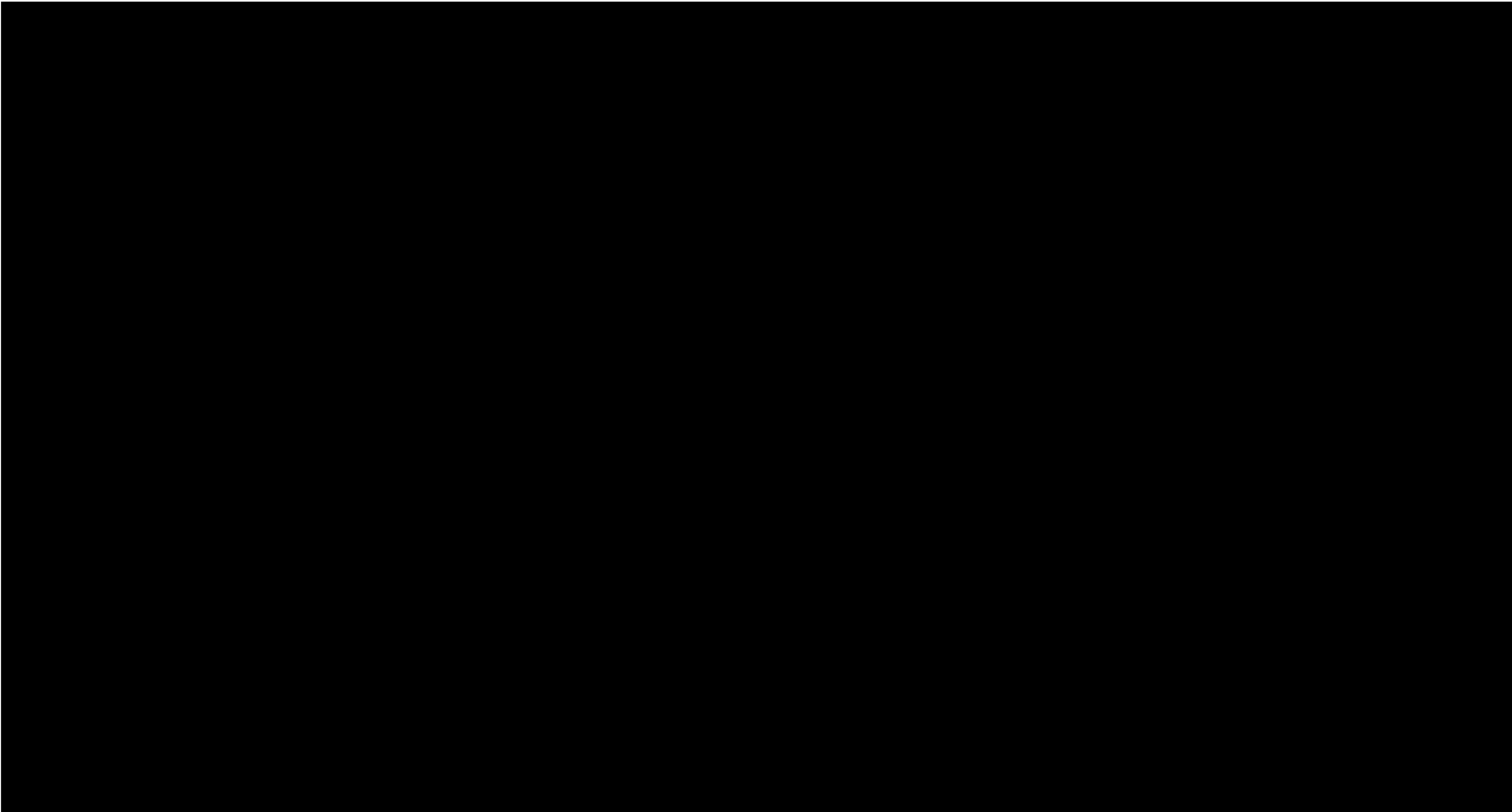
GOOG-BRWN-00613801

Google Fails to Comply: Won't Search ██████████ Linked to Plaintiffs' Device IDs

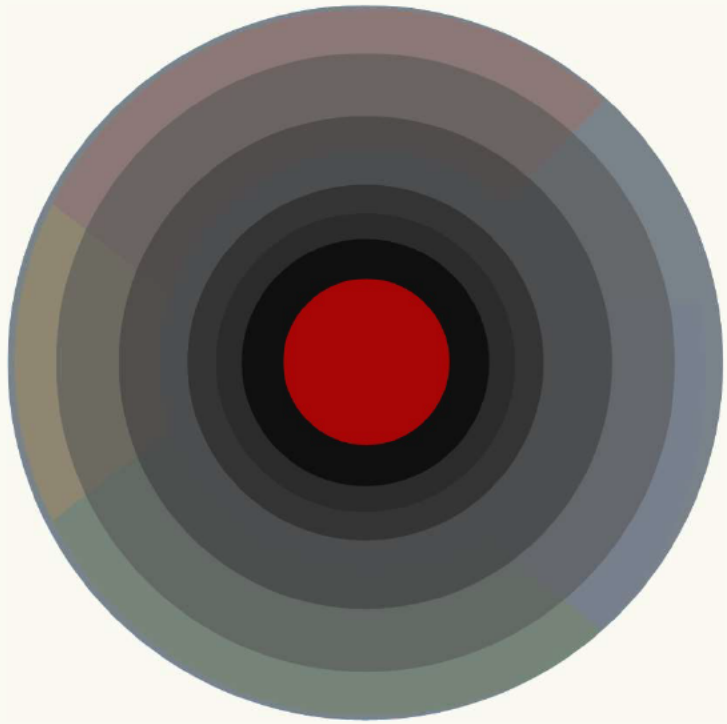


<p>g. ██████████ associated with above Device identifiers.</p>	<p><i>Google does not agree to search for or produce ██████████ associated with above identifiers (f) because such a production would include information associated with users who are not Plaintiffs and who have not consented.</i></p>
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Rule 37(b) Motion Exhibit L



All Plaintiffs Get (Again)? Or Nothing Again?



Google's Arguments Lack Merit:

1. Authenticated & Search Data Are Irrelevant
2. Stored Communications Act Means Data Must Be 100% Linked to Plaintiffs
3. Google Policies Prohibit Production

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Google Admits that the SCA Has an Exception for a “Court Order”

<p>1 DOBBS SCHILLER FLENNER LLP 2 Mark C. Min (CA Bar No. 276165) 3 amc@bdfly.com 4 41 Montgomery Street, 41st Floor 5 San Francisco, CA 94104 6 Telephone: (415) 791-6808 7 Facsimile: (415) 999-8093</p> <p>8 SUSMAN GODFREY L.L.P. 9 William Christopher Carmody (pro hac vice) 10 wccarmody@susmagodfrey.com 11 Steven J. Rubin (pro hac vice) 12 srubin@susmagodfrey.com 13 1301 Avenue of the Americas, 32nd Floor 14 New York, NY 10019 15 Telephone: (212) 536-8330</p> <p>16 MORGAN & MORGAN 17 John A. Varchetti (pro hac vice)</p>	<p>QUINN EMANUEL, URQUHART & SULLIVAN, LLP Andrew R. Schapiro (pro hac vice) andrew.schapiro@quinnemanuel.com 191 N. Wacker Drive, Suite 2700 Chicago, IL 60606 Telephone: (312) 755-7400 Facsimile: (312) 755-7401</p> <p>Stephen A. Biscione (CA Bar No. 314605) stephenbiscione@quinnemanuel.com Vladimir Tselinski (CA Bar No. 300584) vtselinski@quinnemanuel.com 865 S. Figueroa Street, 18th Floor Los Angeles, CA 90017 Telephone: (213) 463-3000 Facsimile: (213) 463-3100</p> <p>Date: 11/12/21</p>
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<p>19 JEREMY DAVIS, CHRISTOPHER CASTILLO, 20 and MONIQUE TRULLO individually and on 21 behalf of all similarly situated, 22 Plaintiffs, 23 v. 24 GOOGLE LLC, 25 Defendant.</p>	<p>JOINT LETTER BRIEF PURSUANT TO DKT. 191- 1 RE: DISPUTE#16 (X-CLIENT-DATA HEADER)</p> <p>Referred: Hon. Susan van Keulen, USMD</p> <p>Case No. 5:20-cv-03664-JHK-SVK JOINT LETTER BRIEF PURSUANT TO DKT. 191-1 RE: DISPUTE#16</p>
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Google Account. Indeed, the Stored Communications Act (“SCA”) prohibits Google from producing authenticated user data without users’ consent or a court order. 18 U.S.C. §§ 2701–11;

Google's Arguments Lack Merit:

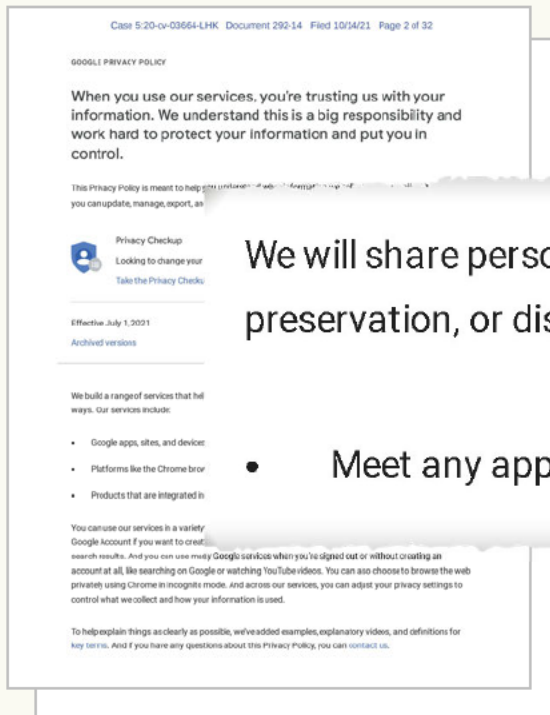
1. Authenticated & Search Data Are Irrelevant
2. Stored Communications Act Means Data Must Be 100% Linked to Plaintiffs
3. Google Policies Prohibit Production

Point 1: U.S. Law Applies, Not Google Law.

Point 2: Google's Privacy Policy Allows Production for Any "Legal Process"

We will share personal information outside of Google if we have a good-faith belief that access, use, preservation, or disclosure of the information is reasonably necessary to:

- Meet any applicable law, regulation, legal process, or enforceable governmental request. We share



Ex. M at 13 (Google Privacy Policy)

What Will Change This Dynamic? Clean Room.

1. Plaintiffs' Experts Inspect the Tools Googlers Use to Query User Data
2. Schema, Manuals, Instructions on How to Use Those Tools
3. Supervised by the Special Master

P16 Dispute (X-Client Data Header)

GOOG-BRWN-00204684
Plaintiffs' Objections Ex. D

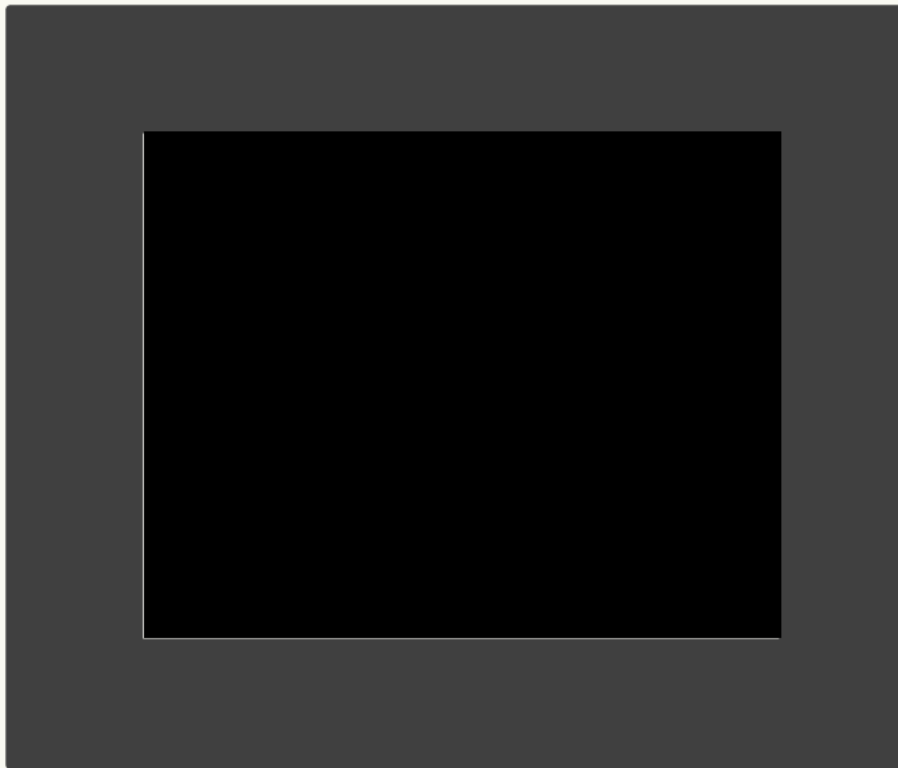
P16 Dispute (X-Client Data Header)

GOOG-BRWN-00051406

P16 Dispute (X-Client Data Header)

GOOG-BRWN-175184 at 4

Plaintiffs Request Source Code for Below and Similar Processes/Tools

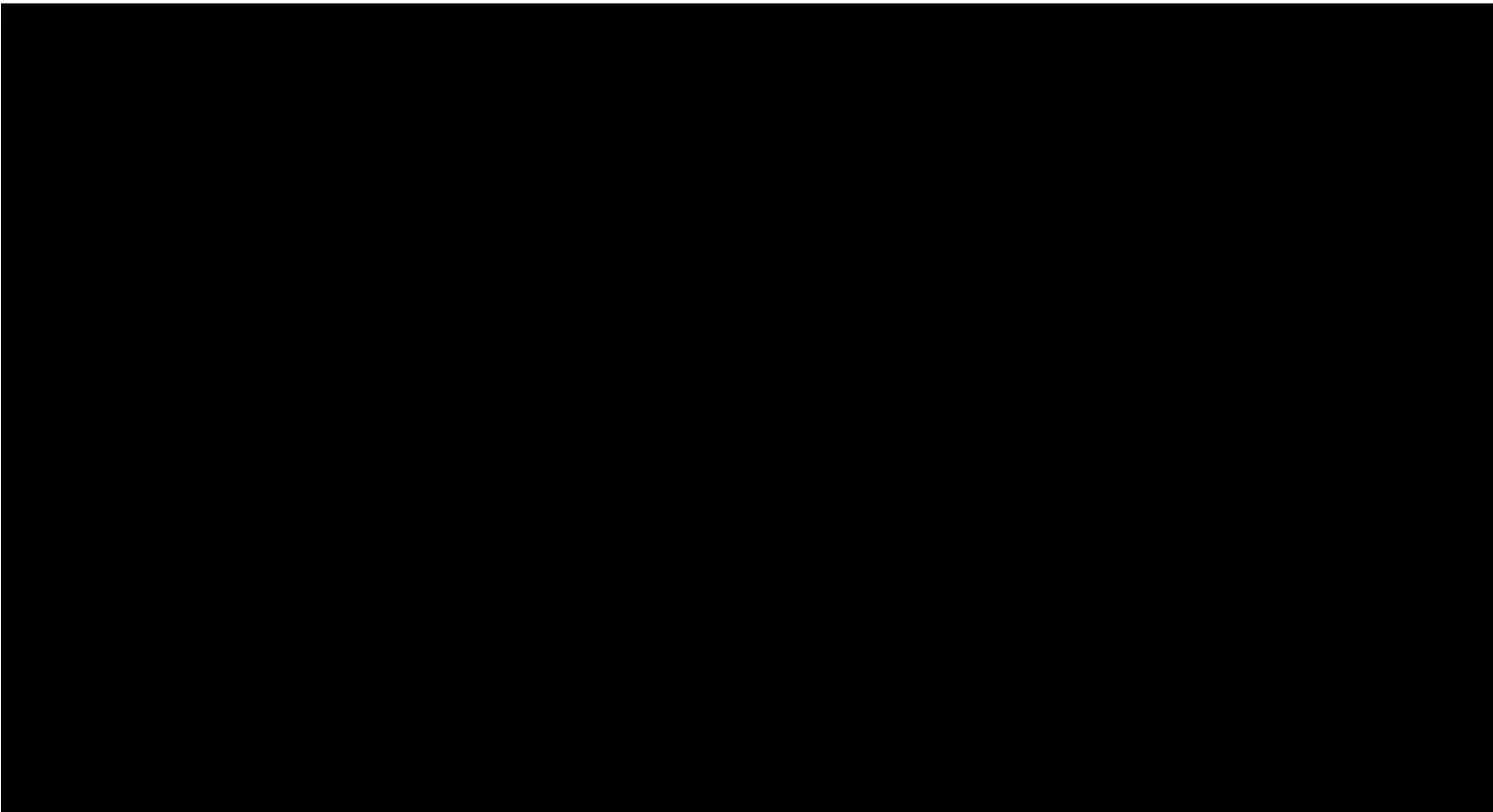


[REDACTED]

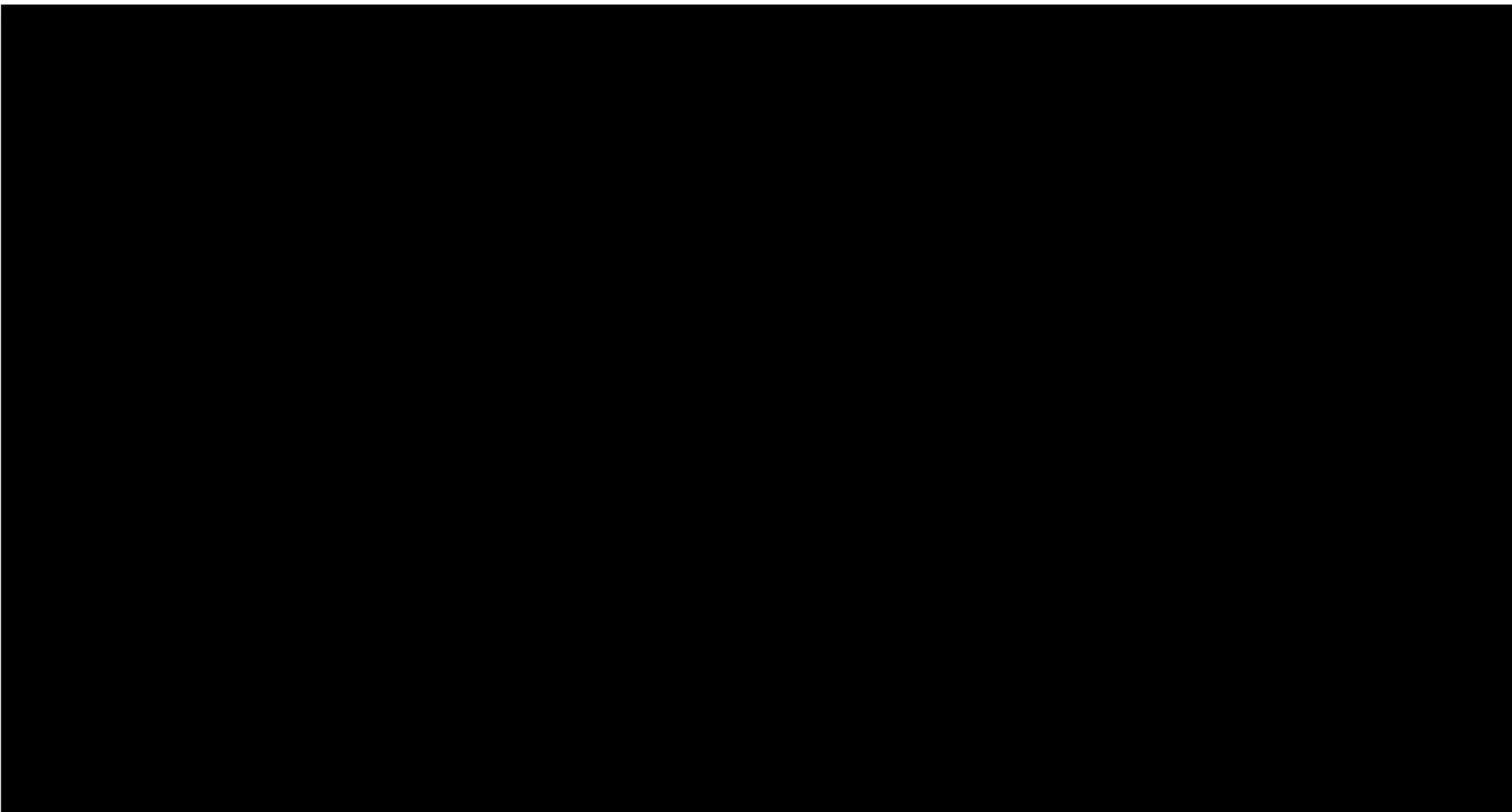
Identifiers:

[REDACTED]

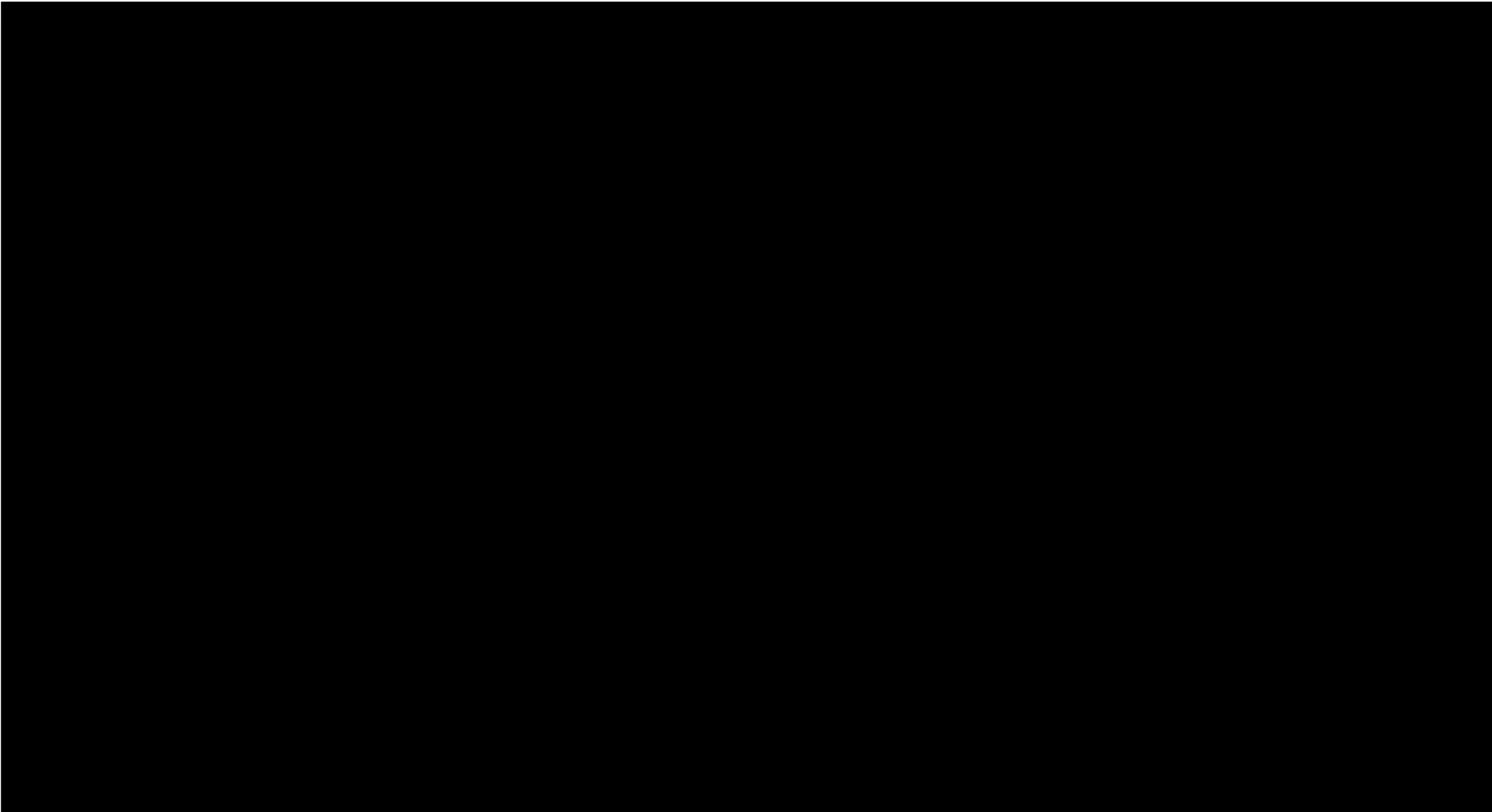
**Incognito, Analytics
& Ad Manager**











GOOG-CABR-03611484 at 2